

Subpart B—Selection Criteria**§ 299.3 What priority may the Secretary establish for activities in an Empowerment Zone or Enterprise Community?**

For any ESEA discretionary grant program, the Secretary may establish a priority, as authorized by 34 CFR 75.105(b), for projects that will—

(a) Use a significant portion of the program funds to address substantial problems in an Empowerment Zone, including a Supplemental Empowerment Zone, or an Enterprise Community designated by the United States Department of Housing and Urban Development or the United States Department of Agriculture; and

(b) Contribute to systemic educational reform in such an Empowerment Zone, including a Supplemental Empowerment Zone, or such an Enterprise Community, and are made an integral part of the Zone or Community's comprehensive community revitalization strategies.

(Authority: 20 U.S.C. 2831(a))

Subpart C—Consolidation of State and Local Administrative Funds**§ 299.4 What requirements apply to the consolidation of State and local administrative funds?**

An SEA may adopt and use its own reasonable standards in determining whether—

(a) The majority of its resources for administrative purposes comes from non-Federal sources to permit the consolidation of State administrative funds in accordance with section 14201 of the Act; and

(b) To approve an LEA's consolidation of its administrative funds in accordance with section 14203 of the Act.

(Authority: 20 U.S.C. 8821 and 8823)

Subpart D—Fiscal Requirements**§ 299.5 What maintenance of effort requirements apply to ESEA programs?**

(a) *General.* An LEA receiving funds under an applicable program listed in paragraph (b) of this section may receive its full allocation of funds only if

the SEA finds that either the combined fiscal effort per student or the aggregate expenditures of State and local funds with respect to the provision of free public education in the LEA for the preceding fiscal year was not less than 90 percent of the combined fiscal effort per student or the aggregate expenditures for the second preceding fiscal year.

(b) *Applicable programs.* This subpart is applicable to the following programs:

(1) Part A of title I (Improving Basic Programs Operated by Local Educational Agencies).

(2) Title II (Eisenhower Professional Development Program) (other than section 2103 and part C of this title).

(3) Subpart 2 of part A of title III (State and Local Programs for School Technology Resources).

(4) Part A of title IV (Safe and Drug-Free Schools and Communities) (other than section 4114).

(c) *Meaning of "preceding fiscal year".* For purposes of determining if the requirement of paragraph (a) of this section is met, the "preceding fiscal year" means the Federal fiscal year, or the 12-month fiscal period most commonly used in a State for official reporting purposes, prior to the beginning of the Federal fiscal year in which funds are available for obligation by the Department.

Example: For fiscal year 1995 funds that are first made available on July 1, 1995, if a State is using the Federal fiscal year, the "preceding fiscal year" is Federal fiscal year 1994 (which began on October 1, 1993 and ended September 30, 1994) and the "second preceding fiscal year" is Federal fiscal year 1993 (which began on October 1, 1992). If a State is using a fiscal year that begins on July 1, 1995, the "preceding fiscal year" is the 12-month period ending on June 30, 1994, and the "second preceding fiscal year" is the period ending on June 30, 1993.

(d) *Expenditures.* (1) In determining an LEA's compliance with paragraph (a) of this section, the SEA shall consider only the LEA's expenditures from State and local funds for free public education. These include expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net

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expenditures to cover deficits for food services and student body activities.

(2) The SEA may not consider the following expenditures in determining an LEA's compliance with the requirements in paragraph (a) of this section:

(i) Any expenditures for community services, capital outlay, debt service or supplemental expenses made as a result of a Presidentially declared disaster.

(ii) Any expenditures made from funds provided by the Federal Government.

(Authority: 20 U.S.C. 8891)

Subpart E—Services to Private School Students and Teachers

§ 299.6 What are the responsibilities of a recipient of funds for providing services to children and teachers in private schools?

(a) *General.* An agency or consortium of agencies receiving funds under an applicable program listed in paragraph (b) of this section, after timely and meaningful consultation with appropriate private school officials (in accordance with the statute), shall provide special educational services or other benefits under this subpart on an equitable basis to eligible children who are enrolled in private elementary and secondary schools, and to their teachers and other educational personnel.

(b) *Applicable programs.* This subpart is applicable to the following programs:

(1) Part C of title I (Migrant Education).

(2) Title II (Professional Development) (other than section 2103 and part C of this title).

(3) Title III (Technology for Education) (other than part B of this title) (Star Schools).

(4) Part A of title IV (Safe and Drug-Free Schools and Communities) (other than section 4114).

(5) Title VI (Innovative Education Program Strategies).

(6) Title VII (Bilingual Education).

(c) *Provisions not applicable.* Sections 75.650 and 76.650 through 76.662 of title 34 of the Code of Federal Regulations (participation of students enrolled in private schools) do not apply to pro-

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grams listed in paragraph (b) of this section.

(Authority: 20 U.S.C. 8893)

§ 299.7 What are the factors for determining equitable participation of children and teachers in private schools?

(a) *Equal expenditures.* (1) Expenditures of funds made by an agency or consortium of agencies under a program listed in § 299.6 (b) for services for eligible private school children and their teachers and other educational personnel must be equal on a per-pupil basis to the amount of funds expended for participating public school children and their teachers and other educational personnel, taking into account the number and educational needs of those children and their teachers and other educational personnel.

(2) Before determining equal expenditures under paragraph (a)(1) of this section, an agency or consortium of agencies shall pay for the reasonable and necessary administrative costs of providing services to public and private school children and their teachers and other educational personnel from the agency's or consortium of agencies' total allocation of funds under the applicable ESEA program.

(b) *Services on an equitable basis.* (1) The services that an agency or consortium of agencies provides to eligible private school children and their teachers and other educational personnel must also be equitable in comparison to the services and other benefits provided to public school children and their teachers or other educational personnel participating in a program under this subpart.

(2) Services are equitable if the agency or consortium of agencies—

(i) Addresses and assesses the specific needs and educational progress of eligible private school children and their teachers and other educational personnel on a comparable basis to public school children and their teachers and other educational personnel;

(ii) Determines the number of students and their teachers and other educational personnel to be served on an equitable basis;